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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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MAR 2 3 2004

FILE: [redacted] Office: SAN FRANCISCO, CA Date:

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The applicant married a legal permanent resident of the United States on August 19, 1999 in the Philippines. On February 13, 2001, the applicant's husband became a naturalized citizen of the United States. The applicant is the beneficiary of an approved Petition for Alien Relative. The applicant seeks the above waiver of inadmissibility in order to remain in the United States with her husband.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the District Director, dated April 21, 2002.

On appeal, counsel contends that the Immigration and Naturalization Service [Citizenship and Immigration Services] failed to consider all of the evidence submitted in support of the waiver application. *See* Form I-290B, dated May 8, 2002.

In support of these assertions, counsel submits a declaration of the applicant's spouse, dated May 10, 2002; a declaration of the son of the applicant's spouse, dated May 10, 2002 and a copy of the Philippine birth certificate of the son of the applicant's spouse. The record also contains a declaration of the applicant's spouse, dated January 15, 2002; a declaration of the applicant, dated January 15, 2002; copies of medical reports for the applicant's spouse and the mother of the applicant's spouse; a copy of a letter from a physician treating the applicant's spouse, dated October 25, 2001; a copy of the Philippine birth certificate of the applicant; copies of family photographs; verification of the employment of the applicant's spouse and copies of tax and financial documents for the couple. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant procured entry into the United States on or about September 6, 2000, with a visitor visa that she obtained by falsely representing her marital status to a consular officer.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that the applicant's husband has family ties to his son and mother in the United States that prevent him from relocating to the Philippines in order to remain with the applicant. *See* Declaration of [redacted], dated May 10, 2002. The applicant's husband contends that his son's mother abandoned the child when he was seven years old and that his son requires his father's "complete guidance and supervision." *Id.* The AAO notes that the applicant's son will reach eighteen years of age during the current calendar year rendering the assertions of the applicant's spouse regarding his need for constant supervision less persuasive. However, the applicant's spouse also contends that he needs to remain in the United States in order to earn enough money to pay for his son's college education and provide care to his aging, ailing mother. *Id.* The applicant's spouse further asserts that he is accustomed to the American way of life and values residing physically close to his immediate family members including his brothers and sister. *See* Declaration of [redacted] dated January 15, 2002. The record establishes that the applicant's spouse suffers from skin rashes for which he contends he would be unable to obtain adequate medical treatment in the Philippines. *Id.*

Counsel does not establish extreme hardship to the applicant's husband if he remains in the United States in order to further his son's education, maintain his employment benefits and close family ties and care for his elderly mother. The AAO notes that, as a naturalized U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's husband states that he will undergo financial hardship as a result of maintaining two households if he is separated from the applicant. *See* Declaration of [redacted] dated May 10, 2002. The record does not demonstrate that the applicant's wife cannot support herself financially while residing outside of the country. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community

ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.